

December 1959

## Mines and Minerals--Natural Gas Not Included in Conveyance of "Minerals"

F. L. D. Jr.

*West Virginia University College of Law*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Oil, Gas, and Mineral Law Commons](#), and the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

F. L. D. Jr., *Mines and Minerals--Natural Gas Not Included in Conveyance of "Minerals"*, 62 W. Va. L. Rev. (1959).

Available at: <https://researchrepository.wvu.edu/wvlr/vol62/iss1/5>

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

## CASE COMMENTS

**MINES AND MINERALS—NATURAL GAS NOT INCLUDED IN CONVEYANCE OF "MINERALS."**—*D* was the lessee from one who claimed ownership of the natural gas under a deed which granted and conveyed to his predecessors in title "all the coal, coal oil, fire clay and other minerals of every kind and character" under the described tract of land. The deed conveyed to the grantee the right to enter and remove the coal and other minerals of every kind and character, and the right to erect all necessary structures incident to this removal. *P* claims under a lease from a claimant who derived title through the severance-grantors. *P* drilled six gas wells, and in this case sought an injunction to prohibit *D* from completing the drilling of a well which *D* had commenced. *Held*, in granting the injunction, that a conveyance of all coal and other minerals of every kind and character under a tract of land in Pennsylvania did not include natural gas. *New York State Natural Gas Corp. v. Swan-Finch Gas Dev. Corp.*, 173 F. Supp. 184 (W.D. Pa. 1959).

Whether petroleum oil and natural gas are included in a conveyance or a reservation of "minerals" has troubled the courts since the turn of the century. Prior to that time, since oil and gas had little value, courts were prone to hold that the parties did not intend to include oil and gas in a conveyance or reservation of minerals. See, *Stegall v. Bugh*, 310 S.W.2d 251 (Ark. 1958). While a vast majority of the courts have since changed and modified this rule because the parties in recent years have intended to include gas and oil in the term "minerals," Pennsylvania has chosen to follow their rule that oil and gas are not minerals. The United States district court in the principal case decided the issue on the basis of controlling Pennsylvania law.

The first Pennsylvania case on this subject held that a reservation in a deed of "all minerals" did not include petroleum oil. *Dunham v. Kirkpatrick*, 101 Pa. 36 (1882). Another early case establishing this law was *Silver v. Bush*, 213 Pa. 195, 62 Atl. 832 (1906), where it was held that even though natural gas is a mineral in a scientific sense, in the absence of any intention to the contrary a reservation of "the mineral underlying" land does not include natural gas. This rule requiring clear and convincing evidence to show that gas is intended to be included in the term "minerals" still prevails in Pennsylvania, as evidenced by the principal case,

and the earlier case of *Bundy v. Myers*, 372 Pa. 583, 94 A.2d 724 (1953), where a reservation of "the oil, coal, fire clay and minerals of every kind and character," was held not to include natural gas.

While Pennsylvania has followed its older cases on this subject, the weight of authority is that in a conveyance or reservation of minerals, "there is no question that minerals include oil and gas." *Crain v. Pure Oil Co.*, 25 F.2d 824, 826 (8th Cir. 1928). *Accord*, *Poe v. Ulrey*, 233 Ill. 56, 84 N.E. 46 (1908); *Warren v. Clinchfield Coal Corp.*, 166 Va. 524, 186 S.E. 20 (1936). This seems to be the more reasonable view, for even the Pennsylvania court admits that the layman and the scientist include these elements in the definition of minerals. *Silver v. Bush*, *supra*.

A problem of interpretation often arises when certain minerals are specifically listed and either preceded or followed by the more general term "minerals." In such a case, the intent of the parties to the instrument should govern. Thus, in a conveyance excluding "minerals and oil," the word "mineral" included gas as well as oil. The mere fact that a particular mineral had not been discovered or was unknown at the time of the conveyance does not alter the rule. *Maynard v. McHenry*, 271 Ky. 642, 113 S.W.2d 13 (1938). On the other hand, *Stegall v. Bugh*, *supra*, held that the accepted legal and commercial usage at the time of the conveyance should govern the interpretation of the language of the deed. Thus "mineral" did not include oil and gas in 1900, as the latter were not discovered in the area until twenty years later.

The majority view that the term "minerals" includes oil and gas finds support in two cases with granting clauses similar to the one in the principal case. *Gibson v. Sellars*, 252 S.W.2d 911 (Ky. 1952), held that a deed containing a reservation or exception of "coal and minerals" includes also the oil and gas underlying the land. The word "coal" is merely added for description, and consequently does not qualify the word "mineral." *Accord*, *Lase v. Boatman*, 217 S.W. 1096 (Tex. Civ. App. 1919). Even when there is a conveyance to a coal company of "all coal and minerals of every description in, upon, or underlying land," it has been held to include all oil and gas, if any. *Warren v. Clinchfield Coal Corp.*, *supra*.

The West Virginia court has rationally approached the problem by holding that the word "mineral," as used in deeds, does not have an absolute legal definition. While it may be limited by the doctrine of *ejusdem generis*, it *prima facie* includes oil and

natural gas, and will not be restricted unless the context of the deed clearly shows an intention to that effect. *Prindle v. Baker*, 116 W. Va. 48, 178 S.E. 513 (1935). In interpreting the West Virginia law on this subject, the circuit court of appeals stated in *Dingess v. Huntington Dev. & Gas Co.*, 271 Fed. 864, 866 (4th Cir. 1921), that "such is to be ascertained from the language of the deed, the relative position of the parties, and the nature of the transaction." Thus a conveyance of "all the minerals, mineral substances, and oils of every sort and description" was held to include natural gas.

West Virginia has logically followed this reasoning by holding that an exception or reservation of "all mineral, coal, iron etc." included oil and gas. The other words do not qualify or restrict the word "mineral," and the doctrine of *ejusdem generis* is not applicable. *Norman v. Lewis*, 100 W. Va. 429, 130 S.E. 913 (1925). A provision in a deed "excepting and reserving from this grant all the coal iron and minerals," with a recitation that no conveyance thereof was intended, and with no limitation or qualification by other language, excepted from the conveyance all oil and natural gas in the land. *Burdette v. Bruen*, 118 W. Va. 624, 191 S.E. 360 (1937). The court also stated that where the deed is ambiguous, the court will not be bound by the general rule that in the absence of any limitation or qualification as to intention by any other clause of the deed, the word "minerals" includes oil and gas as well as solid minerals. However, the doctrine of *ejusdem generis* will not be invoked where the language is clear and unambiguous as to intent.

One West Virginia case, *Horse Creek Land & Mining Co. v. Midkiff*, 81 W. Va. 616, 95 S.E. 26 (1918), seems to be at first glance clearly contra to other cases in this state. There it was held that an exception and reservation of "all the minerals, coals," with rights of ingress and egress was not a reservation of oil and gas. It was thought that the word "coals" qualified the word "minerals." The use of the word "the" before minerals seems to be the sole distinguishing factor of this case as compared with the cases discussed above. While this is admittedly a very slight distinction, the intention of the parties was also considered.

In comparison, a Virginia case held that a conveyance of land excepting "all the metals and minerals of every kind and character," did not except limestone. The theory was that since the land was located in limestone territory, and the parties knew that it could

not be removed without destroying the surface, they would have specifically mentioned limestone had they intended to convey it. *Beury v. Shelton*, 151 Va. 28, 144 S.E. 629 (1929). In viewing this case, at least one noted authority has stated that by a similar process of reasoning, "strip" coal is not a mineral. Indeed, there are indications that the West Virginia court may so hold. *DONLEY, COAL, OIL & GAS IN WEST VIRGINIA AND VIRGINIA* §§ 30-33 (1951).

In conclusion, West Virginia has tended to follow the majority and better view that petroleum oil and natural gas are included in the term "minerals" as used in a conveyance or exception in a deed, unless a contrary intent is clearly shown. Under this view the principal case, which states the applicable and recognized law of Pennsylvania, is contra to this theory and is definitely the minority holding. In the writer's opinion, this case would therefore be followed by very few courts today.

F. L. D., Jr.

---

ESTATE AND GIFT TAX—GRATUITOUS CONVEYANCE IN FEE SIMPLE—ORAL RETENTION OF ENJOYMENT BY GRANTOR FOR LIFE.—Decedent gratuitously executed general warranty deeds to his children for income-producing real estate. The deeds did not recite any reservation of interest in either the realty or rents; however, decedent entered into oral agreements with his grantees under which he was entitled to, and actually did receive, all rents until he died. The Tax Court of the United States upheld the commissioner's inclusion of the realty in decedent's estate. *Held*, that the retention of the right to the rents, even though disassociated from the instruments of conveyance, did not preclude the application of the retention-of-enjoyment meaning of the statute (Int. Rev. Code of 1954 § 2036) if decedent in fact did so enjoy the property during his life. Thus, the value of the premises was properly included in decedent's gross estate for federal estate tax purposes. *McNichol v. Commissioner*, 265 F.2d 667 (3d Cir. 1959).

The element making this case worthy of attention was not the gratuity of the transaction, but the oral retention of the enjoyment of the property for life. It is true that the absence of any consideration prevented the transfer from being a bona fide sale, but it is equally true that the presence of nominal consideration would not have been "adequate and full consideration in money or money's worth" and thus the transfer would still not have been eligible for